

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 11, 1997

UNITED STATES OF AMERICA	)	
Complainant,	)	8 U.S.C. § 1324c Proceeding
	)	
v.	)	OCAHO Case No. 96C00101
	)	
JOSE GUADALUPE GOMEZ-RINCON	)	
Respondent.	)	

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This is an action arising under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324c (INA or the Act), in which the United States Department of Justice, Immigration and Naturalization Service (INS) is the complainant and Jose Guadalupe Gomez-Rincon is the respondent. On September 3, 1996, INS filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that respondent possessed and/or provided Resident Alien Card, A57 893 452 bearing the name Gomez-Rincon, Jose Guadalupe and Social Security Card, 572-97-6027 also bearing the name Gomez-Rincon, Jose Guadalupe after November 29, 1990, knowing the documents to be forged, counterfeited, altered and/or falsely made, for the purpose of satisfying a requirement of the Act. Service of the Complaint was attempted by this office on September 11, 1996 via certified mail, return receipt requested, at 4142 1/2 Estrella Avenue, San Diego, CA 92105. The Complaint was returned to this office marked "Unclaimed" on October 7, 1996. An alternative address for service was suggested by INS and thereafter, a second attempt at service was made on October 15, 1996, at 4568 Altadena Avenue, Apt. B, San Diego, CA 92115, by certified mail, return receipt requested. This package too was returned to this office on December 4, 1996 after an unsuccessful attempt at delivery. On December 5, 1996, complainant was informed of the difficulties encountered in perfecting service on respondent and was charged with executing service of the Complaint. On March 31, 1997, complainant filed Government Motion to Dismiss Complaint, asserting, without elaboration, that it was "tasked with attempting to serve Respondent, but, as of this date, no such service has been effectuated." Complainant requests that the Complaint be dismissed without prejudice to its right to refile, should respondent be located.

OCAHO Rules of Practice and Procedure<sup>1</sup> provide that service of a complaint is complete upon receipt by the addressee. 28 C.F.R. § 68.3(b). Without service, an action cannot proceed. Prior OCAHO caselaw deems that, where service has not been achieved, the complaint should be

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<sup>1</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1996).

dismissed without prejudice to the government's right to refile in the event that service becomes possible. See, e.g., United States v. Mayfly Fashion, Inc., 6 OCAHO 894 (1996), United States v. Iniguez-Casillas, 6 OCAHO 870 (1996), United States v. Baches-Corado, 3 OCAHO 571 (1993). Accordingly, in view of the unavailing attempts at effectuating service on respondent, complainant's motion to dismiss the complaint without prejudice is granted.

SO ORDERED.

Dated and entered this 11th day of April, 1997.

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Ellen K. Thomas  
Administrative Law Judge.

CERTIFICATE OF SERVICE

I hereby declare that on this 11th day of April, 1997, I have served copies of the foregoing Order Dismissing Complaint Without Prejudice on the following persons at the addresses shown:

Dea Carpenter, Esquire  
Associate General Counsel  
Immigration and Naturalization Service  
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Cynthia A. Castañeda  
Legal Technician to  
Ellen K. Thomas  
Administrative Law Judge  
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